

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL APPLICATION NO.2319 OF 2006
AND
CRIMINAL APPLICATION NO.2318 OF 2006**

Shri Sudhakar Gopal Deshmukh ...Applicant
(In both the Applications)

Vs.

M/s.Artson Engineering Ltd. & Ors. ...Respondents
(In both the Applications)

Shri D.B.Patil for the Applicant in both the Applications.
Shri S.V.Kotwal for the Respondent Nos.1,2 and 3 in both the Applications.
Shri A.S.Shitole, A.P.P. for the Respondent No.4- State in both the Applications.

**CORAM : A. S. OKA, J.
DATE : AUGUST 25, 2006.**

P.C.:

1. Heard the Advocates appearing for the parties.
A case for grant of leave is made out. Accordingly leave is granted. Appeals are admitted. The Advocates appearing for the Respondents waives service.
2. Considering the facts and circumstances of the case, Appeals are taken up for hearing forthwith.
3. The facts of both the Appeals are more or less identical and therefore, reference is made to the

facts of the case in Criminal Application No.2318 of 2006. The Appellant is the complainant in a complaint under section 138 read with section 141 of the Negotiable Instruments Act, 1881. On the said complaint process was issued. The complaint was fixed on 29th June, 2004. According to the case of the Appellant on 29th June, 2004 the next date was fixed as 17th September, 2004. According to the case of the Appellant, without the knowledge of the Appellant, the said date was subsequently changed to 05th August, 2004. As the Appellant was under an impression that the next date was 17th September, 2004 he did not attend the court on 05th August, 2004, 18th August, 2004, 27th August, 2006 and 02nd September, 2004. On 02nd September, 2004 the learned Judicial Magistrate First Class dismissed the complaint in exercise of powers under section 256 of the Code of Criminal Procedure, 1973. The main submission of the Appellant is that he was not aware that the next date which was earlier fixed as 17th September, 2004 was changed to 05th August, 2004.

4. The learned Advocate appearing for the first to third Respondent submitted that on 29th June, 2004

the Appellant was absent. He submitted that even the roznama of the proceedings shows that the next date was fixed as 05th August, 2004 and not as 17th September, 2004. He, therefore, submitted that there was no justification for the Appellant remaining absent on 05th August, 2004. He submitted that even on some of the earlier dates the Appellant was absent.

5. I have considered the submissions. The learned Advocate appearing for the Appellant stated that he is withdrawing the allegations made in the Application against the concerned Advocate who appeared in the trial court for the first to third Respondents.

6. On 29th June, 2004, the Advocate for the Appellant/Complainant submitted an application for grant of exemption on the ground that the Appellant was suffering from heart ailment and was under the treatment of a medical practitioner. Thus, it is apparent that on that day the Advocate for the Appellant was present. A true copy of daily board of 29th June, 2004 of the concerned court is placed on record by both the parties. It does appear from the

daily board of 29th June, 2004 that initially next date was fixed on 17th September, 2004 and subsequently the same was altered to 05th August, 2004. Therefore, there is substance in the submission of the Advocate for the Appellant that the Appellant was not aware about the next date fixed. As the Appellant did not attend the court on 05th August, 2004, he was not aware about the dates fixed after 05th August, 2004. Considering the peculiar facts of the case, the orders passed by the Trial Court on 02nd September, 2004 deserve to be quashed and set aside and the complaints filed by the Applicant/Appellant deserve to be restored to the file.

7. Hence, I pass the following order:

(i) The impugned orders dated 02nd September, 2004 are quashed and set aside and Criminal Case Nos. 778 of 2001 and 777 of 2001 are restored to file of the learned Trial Judge.

(ii) The Petitioner and the first to third Respondents are directed to appear before the learned Trial Judge on 25th September, 2006 at

11.00 a.m. for fixing further schedule of
hearing of the complaints.

- (iii) The Appeal is accordingly allowed.
- (iv) Parties and the concerned court to act upon an
authenticated copy of this order.
- (v) Writ to be sent forthwith.

JUDGE